Court No.2

In the High Court of Uttaranchal at Nainital.
First Appeal From Order No. 383 of 2001
(Old No. 845 of 1991)

(1) Smt. Kanti Devi W/o late Sri Shambhoo Prasad Bhatt,
(2) Km. Vineeta D/o late Sri Shambhoo Prasad Bhatt,
(3) Kiran Bhatt S/o late Sri Shambhoo Prasad Bhatt,
(4) Km. Pushpa D/o late Sri Shambhoo Prasad Bhatt
All Residents of Village Haldoo Khata, Halka-HalduKhata, Post Office-Kalalghati, P.S. and Tehsil-Kotdwara District-Pauri Garhwal.

.....Appellants/Claimants

Versus

(1) Oriental Insurance Company Ltd., Hardwar
(2) Mohd. Yakub (Owner of Truck No. UPU –9199)
(3) Baljeet Singh (Truck Driver)

.....Respondents/Opp. Parties.

Sri B.P. Nautiyal, learned counsel for the appellants.
Sri T.A. Khan, learned counsel for the Respondent No.1.

.....

Dated: 12th Aug., 2004.

Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma,J.

This is an appeal under Section 110-D of the Motor Vehicles Act, 1939 read with Sec. 173 of the Motor Vehicle Act 1988 filed by the claimants for enhancement of the compensation awarded by the Motor Accident Claims Tribunal/District Judge, Pauri Garhwal, in Motor Accident Claim Case No. 56 of 1988 on 26.07.1991.

Brief facts of the case are that the accident took place on 30.09.1988, at 6:30 P.M. at village Jasodharpur, P.S.-Kotdwara by Truck No. UPU 9199. Deceased Shambhoo Prasad died on the spot in this accident. He was aged 40 years at the time of his death and he was carrying on business of fair price shop as swell as agriculture and was earning about Rs. 2500/- per month from both the trades.

The learned counsel for the appellants submitted that the Motor Accident Claims Tribunal *(hereinafter referred to as the Tribunal)* has fell into error in not taking into account the agriculture income of the deceased while commuting the income. Only Rs. 1,000/- per month as income has been made basis to award the compensation, which was the income of the deceased from his fair price shop. The Tribunal has recorded a categorical finding that no revenue record was filed by the claimants that the deceased was having agriculture income of his own. Learned counsel for the appellants further submitted that prior to the death of deceased, the father of the deceased had died and 15 Bighas land came in the share of deceased. This argument has been rejected by the Tribunal on the ground that no revenue paper was filed to prove the share. Since this agriculture income was not proved by the claimants before the Tribunal and there is nothing on record to show before us that the deceased was having some agriculture land in his name, the finding recorded by the Tribunal is affirmed that claimants failed to prove that there was some agriculture income of the deceased.

Learned counsel for the appellants further submitted that the Tribunal has erred in reducing the amount one-third twice in calculating the compensation. We find force in this contention of the learned counsel for the appellants. Firstly, the Tribunal has reduced one-third of Rs. 12,000/- per annum, which after applying the multiplier of '15' came to Rs. 1,20,000/- and again one-third of Rs. 1,20,000/- has been reduced which came to Rs. 80,000/-. The reduction of one-third twice towards the expenditure is apparently illegal. Therefore, the compensation which was liable to be paid to the claimants

was Rs. 1,20,000/- out of which Rs. 15,000/- has already been received by the claimants under Sec. 92-A of the Motor Vehicles Act. Reducing Rs. 15,000/- from Rs. 1,20,000/- the claimants were entitled to get compensation amounting to Rs. 1,05,000/- as per the judgment of the Tribunal.

Therefore, the appeal is partly allowed. The claimants shall be paid compensation a sum of Rs. 1,05, 000/- (Rupees one lac five thousand)only by the respondent No.1-Oriental Insurance Company Ltd. alongwith interest at the rate of 9% (nine per cent) per annum as held by the Tribunal from the date of award i.e. 26.07. 1991 till the date of final payment. The order dated 26.07.1991 passed by Tribunal is modified accordingly.

(B.S. Verma, J.) **(P.C. Verma, J.)**

P.Singh